IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.3.2007

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.NPD No.681/2004

Prabhakar Paharia ... Petitioner/Respondent

-vs.-

1.Mrs.Kokila S.Shah
2.Mrs.Malti N.Shah ... Respondents/Petitioner

Revision filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 against the order dated 20.1.2004 in R.C.A.No.205 of 2001 on the file of VII Judge, Small Causes Court, Madras confirming the order dated 21.2.2001 passed in RCOP.No.2488/1988 by X Judge, Small Causes Court, Madras.

For petitioner ...Mr.K.S.Viswanathan
For respondents ...Mr.N.D.Bahety

ORDER

This Revision Petition has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, hereinafter referred to as 'the Act', against the order dated 20.1.2004 in R.C.A.No.205 of 2001 on the file of VII Small Causes Court, Madras, confirming the order dated 21.2.2001 passed in RCOP.No.2488/1988 by X Small Causes Court, Madras.

2. The tenant is the revision petitioner.

3. The landlords filed RCOP.No.2488 of 1988 on the file of X Small Causes Court, Madras praying for eviction of the tenant from the petition flat bearing Flat No.33, 4th Floor, Madhuban Apartments, No.25, Ritherdan Road, Vepery, Chennai-7. According to the landlords, the tenant committed wilful default in the payment of rent for the months from July, 1997 to September, 1998, (for 15 months) amounting to a sum of Rs.60,000/-. The rent payable is Rs.4,000/- per month.

4.The tenant resisted the eviction petition by contending that he was always ready and willing to pay the rent, but the landlords failed and neglected to collect the rent.

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5. The Rent Controller by order dated 21.2.2001 after evaluating the oral evidence of RW1, the tenant, came to the conclusion that the tenant has committed wilful default and ordered eviction. The Appellate Authority also concurred with the findings of the Rent Controller and dismissed RCA.No.205/2001 by order dated 20.1.2004. Aggrieved by the same, the above Civil Revision Petition has been filed by the tenant.

6. Learned counsel for the tenant submitted that the arrears of rent amounting to a sum of Rs.51,000/- was paid by the tenant on 19.2.1999, (i.e.) on the first date of hearing in the RCOP.No.2488/1988 itself and therefore both the authorities below erred in law in holding that wilful default has been proved. He relied on the decisions reported in 2003(4) L.W.671 )P.M.PUNNOOSE v. K.M.MUNNE-RUDDIN AND OTHERS and 2004(3)L.W.487 (V.SUBRAMANIAN v. J.VENKATARAMAN & ANOTHER in support of his contentions.

7.The learned counsel for the landlords submitted that both the courts on evaluation of evidence, concurrently held that wilful default has been proved and this court need not interfere with these factual findings under Section 25 of the Act. He relied on the decisions of this court reported in 1998-3 L.W.159 (B.ANRAJ PIPADA v. V.UMAYAL and 2000-2-L.W.708) VASUVAITHIAR,P. v. R.M.RANGOO CHETTIAR in support of his arguments.

8.I have considered the submissions carefully with regard to facts and citations.

9.In 2003-4-L.W.671 (cited supra), the Honourable Supreme Court held that the use of the words 'wilful default' in the provisions of Section 10 (2) of the Act is suggestive of the legislative intent that default, in order to be wilful, must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom.

10.The Supreme Court in the above decision further held that the revisional jurisdiction conferred on the High Court under Sec.25 of the Act is not as narrow as one under Sec.115 of CPC, nevertheless a finding of fact arrived at by the appellate authority cannot be lightly interfered with by the High Court acting like a court of appeal and re-appreciating evidence.

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11.After laying down the legal principles as above, the Supreme Court found that the High Court re-appreciated the evidence and set aside the findings of the appellate authority, which is the final court of facts and in the facts and circumstances of that particular case concluded that the tenant has not committed wilful default. This decision is not applicable to the case on hand as the same is easily distinguishable on fact.

12.In 2004-3 L.W. 487 (cited supra), this court after finding that it is not proved by the landlord that the rent was due from June 1986 as

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claimed and after considering that the entire rental arrears were paid in the court on the first date of hearing, came to the conclusion that the tenant has not committed wilful default.

13.The facts in the above decision are also different and the decision rendered on the basis of those facts cannot be made applicable to the facts of the present case. Law laid down by the Supreme Court and High courts has to be read in the background of the facts of each case. Whether the tenant has committed wilful default could depend on the facts and circumstances of a given case, the issue being primarily an issue of fact.

14.If the facts of the present case are considered, R.W.1, the tenant admitted in the cross-examination that rent was not paid from July 1997 onwards and the reason given by him is that the landlords did not come forward to receive the rent. R.W.1 further stated that he is aware of the fact that even if the landlords did not come forward to claim the rent, it is his duty to go and tender the rent. In such circumstances, the inescapable conclusion that could be arrived at is that the default is intentional, deliberate and conscious with full knowledge of legal consequences flowing therefrom. Further even after the RCOP was filed and the rent control proceedings were pending before the rent controller, the tenant was not prompt and ready to pay the rent. He himself as R.W.1 admitted that even after filing the eviction petition, he has not paid the rents regularly when it became due and in fact he paid 3 months rent in a lump sum on the same day when he was cross-examined. This would clearly prove that the tenant is a defaulter and he has not paid the rent then and there when he was facing the eviction proceedings. Considering the oral evidence of R.W.1 and the accompanying circumstances, both the authorities below have concurrently held that the tenant has committed wilful default in the payment of rent which conclusion cannot be easily brushed aside by this court in its revisional jurisdiction.

15.I do not find any illegality or infirmity in the final decision arrived at by the authorities below on the basis of the evidence available before them. Tenant cannot say that he will not pay the rent then and there when the rent becomes due and payable on the pretext that the landlord did not claim the rent. It is the duty of the tenant to tender the rent every month, even if the same is not claimed by the landlord.

16.In 1998(3) L.W. 159 (cited supra), this court held that at least when the eviction proceedings are initiated, one could expect the tenant to pay the rent regularly every month and when the tenant has failed to pay the rent regularly even during the pendency of the proceedings, then there is no doubt that his conduct in paying the rent as he likes, will amount to wilful default.

17.Here also, it is an admitted fact that the rent was not paid by the tenant regularly when RCOP.No.2488/1998 was pending before the Rent

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Controller and hence the conduct of the tenant will no doubt amount to wilful default.

18.In 2000(2) L.W. 708 (cited supra), this court held that under the Rent Control Act, there is a statutory obligation on the part of the tenant to pay rent when it becomes due and payable and if the tenant is not paying the rent on the due date regularly, he must be deemed to be a defaulter in paying rent.

19.The above decision of this court is also applicable to the facts of the present case and I find no merits in the Revision Petition filed by the tenant as it is established that he committed wilful default in the payment of rent to the landlords.

20.In the result, the Civil Revision Petition is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

1. The VII Judge,
Court of Small Causes,
Madras.

2. The X Judge,
Court of Small Causes,
Madras.

3. The Section Officer,
V.R.Section, High Court, Madras

2 cc To Mr.N.D.Bhety, Advocate, SR.13281.
1 cc To Mr.K.S.Viswanathan, Advocate, SR.13266.

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RVL 27.03.2007

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